

ITEM 14

Claimant's Revised Proposed Parameters and Guidelines, As Modified by Commission Staff

Government Code Section 7576
Statutes of 1996, Chapter 654

California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610; and
California Department of Mental Health Information Notice Number 86-29

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services

Executive Summary

Summary of the Mandate

Statutes of 1996, Chapter 654, established new responsibilities for counties to provide mental health services to Seriously Emotionally Disturbed (SED) pupils placed in out-of-state residential programs. California Code of Regulations, sections 60100 was amended to provide that residential placements for a SED pupil may be made out-of-state only when no in-state facility can meet the pupil's needs. Section 60200 was amended to detail the financial responsibilities of county mental health departments and local education agencies (LEAs) for the residential placement of SED pupils.

Background

The Commission on State Mandates, in its Statement of Decision for *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services*, adopted May 25, 2000, determined that the new test claim legislation and regulations impose new programs or higher levels of service within an existing program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

The claimant submitted Proposed Parameters and Guidelines on June 13, 2000. The Commission received comments from the County of Santa Clara, an Interested Party, on June 29, 2000, and from the State Controller's Office (SCO) dated July 13, 2000. On July 25, 2000, the claimant submitted its Review of State Agency and Interested Party Comments along with Revised Proposed Parameters and Guidelines.

Staff Analysis

Staff reviewed the claimant's proposal, comments received, and claimant's revised proposal. Based on this review, staff made one substantive change, to correct the period of reimbursement, and other technical amendments. Changes to the claimant's proposal are shown in strikethrough and underline.

The County of Santa Clara alleged that the claimant's proposal did not include payment for residential costs when placing a SED pupil in an out-of-state program. Staff finds that residential costs are covered under the claimant's proposal, and therefore did not propose any changes.

The Draft Staff Analysis was distributed to the mailing list on August 29, 2000. No comments were received.

Staff Recommendation

Staff recommends that the Commission approve the Claimant's Proposed Parameters and Guidelines, as Modified by Staff.

Chronology

05-25-00	Commission adopted Statement of Decision
06-13-00	Claimant submitted Proposed Parameters and Guidelines
07-25-00	The County of Santa Clara, Interested Party, submitted comments
07-13-00	The State Controller's Office submitted comments
07-25-00	Claimant submitted its Review of State Agency and Interested Party Comments, along with Revised Proposed Parameters and Guidelines
08-29-00	Draft Staff Analysis distributed to mailing list (no comments received)
09-14-00	Final Staff Analysis distributed to mailing list

Summary of the Mandate

Government Code section 7576, as amended by Statutes of 1996, Chapter 654, established new fiscal and programmatic responsibilities for counties to provide mental health services to Seriously Emotionally Disturbed (SED) pupils placed in out-of-state residential programs. In this regard, the California Code of Regulations, sections 60100 and 60200, were amended to further define counties' fiscal and programmatic responsibilities. Specifically, section 60100, entitled "LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil," was amended to provide that residential placements for a SED pupil may be made out-of-state only when no in-state facility can meet the pupil's needs, and section 60200, entitled "Financial Responsibilities," was amended to detail the financial responsibilities of county mental health departments and LEAs regarding the residential placements of SED pupils.

State Agency and Interested Party Comments

The State Controller's Office (SCO) requested the following changes to the claimant's proposal:

VI. Claim Preparation and Submission

B. Indirect Costs

The claimant proposed an indirect cost rate equal to 20 percent of the direct labor, excluding fringe benefits. The SCO noted that, according to the OMB A-87, the standard indirect cost allowance should be 10 percent.

The claimant agreed that the indirect cost allowance should be 10 percent, and made this change in its Revised Proposed Parameters and Guidelines.

VII. Supporting Data

The SCO requested the addition of the following sentence to validate the quantity of work performed for the costs claimed:

"All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed."

The claimant agreed that this request proposed by the SCO was reasonable and incorporated the change in its Revised Proposed Parameters and Guidelines.

The County of Santa Clara, in a letter dated June 29, 2000, stated that the claimant's proposal was incomplete because it omits reimbursement to counties for "residential costs" of the out-of-state placement.

Staff Analysis

Staff reviewed the claimant's proposal, comments received, and claimant's revised proposal. Based on this review, staff modified the claimant's proposal, which is attached hereto and discussed below.

Period of Reimbursement

In Section III., Period of Reimbursement, the claimant's proposal provided for reimbursement of costs incurred on or after September 19, 1996, the enactment date of the statute. Staff changed the section to provide reimbursement of costs incurred on or after January 1, 1997, the operative date of the statute.

In 1984, the Legislature enacted Government Code section 17500 et seq. to establish the Commission on State Mandates and to implement section 6, article XIII B of the California Constitution. Staff notes that there is no express language in article XIII B of the California Constitution or in the Commission's statutory scheme (Gov. Code, § 17500 et seq.) that entitles local governments to subvention for costs incurred between the enactment and effective (operative) date of a statute.

However, the California Constitution provides that in the absence of an urgency clause, a statute enacted at a regular session of the Legislature becomes effective on January 1 of the following year (Cal. Const., art. IV, § 8, subd. (c)(1)).

Courts interpreting this constitutional provision have explained that in the usual situation, the "effective" and "operative" dates are one and the same, *and a statute has no force and effect until such effective-operative date*. In some instances, the Legislature may provide for different effective and operative dates. The operative date is the date upon which the directives of the statute may actually be implemented. The effective date, then, is considered that date upon which the statute came into being as an existing law. An enactment is a law on its effective date only in the sense that it cannot be changed except by legislative process; the rights of individuals under its provisions are not substantially affected until the provision operates as law. The Legislature may establish an operative date later than the effective date, since the power to enact laws includes the power to fix a future date on which the act will become operative.¹

The courts have also explained that a statute has no force for *any* purpose, and is void, until the effective-operative date.

"Until the time it is to take effect, a statute has *no force for any purpose*, though it has been duly passed by the legislature and approved by the Governor. It speaks only from the date it takes effect. Acts done under it before that time are *void*." (Citations omitted, emphasis added.)²

In the present case, it is undisputed that the test claim legislation was enacted on September 19, 1996, and was effective and operative on January 1, 1997. Staff finds that there is nothing in the test claim statute that indicates a legislative intent for this statute to be effective and operative on September 19, 1996. Rather, January 1, 1997 is the date upon which the statute came into being as an existing law.

Accordingly, based on these holdings, staff finds that the test claim statute had no force for any purpose, including mandate reimbursement, until the effective date, January 1, 1997. Therefore,

¹ See Exhibit A, *People v. Camba* (1996) 50 Cal.App.4th 857.

² 58 Cal Jur 3d, section 18, page 330.

staff concludes that section 6, article XIII B of the California Constitution does not require reimbursement for the test claim statute prior to the effective date.

Residential Costs

It is the County of Santa Clara's position that the proposed Parameters and Guidelines do not provide reimbursement for "residential costs" of out-of-state placements. Staff disagrees. The Commission, in its Statement of Decision for this mandate, found that payment of out-of-state residential placements for SED pupils is reimbursable. The Commission's regulations require Parameters and Guidelines to describe specific costs that are reimbursable, including one-time and on-going costs, and the most reasonable methods of complying with the mandate.³ It is staff's position that the cost of out-of-state residential placement of SED pupils would reasonably include the board and care of that pupil while they are out-of-state, and therefore, staff finds that residential costs are covered under payment of out-of-state residential placement for SED pupils. Staff does not propose any changes to Claimant's Revised Proposed Parameters and Guidelines, since Section IV., entitled "Reimbursable Activities, B. Continuing Costs, 1. Mental Health Service Vendor Reimbursements," already provides for reimbursement to counties for "payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and the California Code Regulations, Title 2, subsections 60100 and 60110." It is staff's position that under Section IV., the term "payments to service vendors providing mental health services to SED pupils in out-of-state residential placements" includes reimbursement for "residential costs" of out-of-state placements.

Other Changes

Staff made only non-substantive changes to the remainder of Claimant's Revised Proposed Parameters and Guidelines. These changes were made for the purposes of clarification, conformity to the Statement of Decision, or consistency with language in the current Parameters and Guidelines.

Staff Recommendation

Staff recommends that the Commission approve the Claimant's Proposed Parameters and Guidelines, as modified by staff.

³ Title 2, California Code of Regulations, section 1183.1 (a) (4).

Parameters and Guidelines

Government Code Section 7576, ~~as amended by~~
Statutes of 1996, Chapter 654 ~~Statutes of 1996~~

California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60000-60610
California Department of Mental Health Information Notice Number 86-29

Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services

I. SUMMARY OF MANDATE

Government Code section 7576, as amended by Statutes of 1996, Chapter 654, ~~Statutes of 1996~~ established new fiscal and programmatic responsibilities for counties to provide mental health services to Seriously Emotionally Disturbed (SED) pupils placed in out-of-state residential programs. In this regard, Title 2, Division 9, Chapter 1 of the California Code of Regulations, sections ~~60100 and 60200~~ 60000 through 60610, were amended to further define counties' ~~new~~ fiscal and programmatic responsibilities including those set forth under section 60100 entitled "LEA ~~Identification of~~ and Placement of a Seriously Emotionally Disturbed Pupil," ~~requiring~~ providing that residential placements for a SED pupil may be made out-of-state only when no in-state facility can meet the pupil's needs, and under section 60200 entitled "Financial Responsibilities," detailing county mental health and LEA financial responsibilities regarding the residential placements of SED pupils.

~~II. COMMISSION ON STATE MANDATES DECISION~~

On May 25, 2000, the Commission on State Mandates (Commission) adopted its "Statement of Decision" on the subject test claim, finding the following ~~services-activities~~ to be reimbursable:

- Payment of out-of state residential placements for SED pupils. (Gov. Code, ~~section~~ § 7576, Cal. Code Regs., tit. 2, ~~subsections-§§~~ 60100, 60110)
- Case ~~M~~management of out-of-state residential placements for SED pupils. Case management includes supervision of mental health treatment and monitoring of psychotropic medications. (Gov. Code, ~~Section-§~~ 7576, Cal. Code Regs., tit. 2, ~~Section-§~~ 60110.)
- Travel to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's Individualized Education Plan (IEP). (Cal. Code Regs., tit. 2, ~~Section-§~~ 60110.)
- Program management, which includes parent notifications, as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and Title 2, California Code of Regulations, ~~tit. 2, subsections~~ division 60400, - 60610. (Gov. Code, § 7576; Cal. Code of Regs., tit. 2, §§ 60100, 60110.)

~~III. ELIGIBLE CLAIMANTS~~

Counties.

IIIIV. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code, ~~prior to its amendment by Statutes of 1998, Chapter 681,~~ ~~states~~ that a test claim must be submitted on or before December 31st following a given fiscal year to establish eligibility ~~for reimbursement~~ for that ~~fiscal~~ year. This test claim was filed by the County of Los Angeles on December 22, 1997. ~~Statutes of 1996, Chapter 654, was enacted on September 19, 1996 and became effective on January 1, 1997.~~ Therefore, costs incurred in implementing Chapter 654, Statutes of 1996 ~~on or after its enactment on September 19, 1996, subsequent to July 1, 1996~~ January 1, 1997, are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)-(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE COSTS ACTIVITIES

~~Costs incurred to provide services to SED pupils placed in out-of-state residential programs are reimbursable as follows:~~

The direct and indirect costs of labor, materials and supplies, contracted services, equipment, training, and travel incurred for the following mandate components are eligible for reimbursement:

A. One-Time Costs

1. To develop policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.
2. To conduct county staff training on the new policies, procedures and contractual arrangements, necessary to implement a county's new fiscal and programmatic responsibilities for SED pupils placed in out-of-state residential programs.

B. Continuing Costs

1. Mental Health Service Vendor Reimbursements

To reimburse counties for payments to service vendors providing mental health services to SED pupils in out-of-state residential placements as specified in Government Code section 7576 and ~~the~~ Title 2, California Code Regulations, Title 2, sub ~~sections~~ divisions 60100, and 60110.

2. Case Management

To reimburse counties for case management of SED pupils in out-of-state residential placements, including supervision of mental health treatment and monitoring of psychotropic medications as specified in Government Code section 7576 and ~~the Title 2,~~ California Code of Regulations, ~~Title 2,~~ sub~~section~~ division 60110, including the costs of case-specific litigation over mental health treatment and/or psychotropic medication issues.

3. Travel

To reimburse counties for travel costs necessary to conduct quarterly face-to-face contacts at the residential facility to monitor level of care, supervision, and the provision of mental health services as required in the pupil's IEP as specified in ~~the Title 2,~~ California Code of Regulations, ~~Title 2,~~ sub~~section~~ division 60110.

4. Program Management

To reimburse counties for program management costs, which include the costs of parent notifications as required, payment facilitation, and all other activities necessary to ensure a county's out-of-state residential placement program meets the requirements of Government Code section 7576 and ~~the Title 2,~~ California Code of Regulations, ~~Title 2,~~ sub~~sections~~ divisions 60100, ~~and~~ 60110.

VI. CLAIM PREPARATION AND SUBMISSION

~~Each Cc~~ Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section V. of ~~these Parameters and Guidelines document.~~

~~SUPPORTING DOCUMENTATION~~

~~Claimed costs must be supported by the following cost element information:~~

A. Direct Costs

Direct costs s are defined as costs s that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for ~~personal-personnel~~ services includes compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution ~~to~~ of social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as direct costs of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contract for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is eligible for reimbursement.

5. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VII. SUPPORTING DATA

For audit~~ing~~ purposes, all costs claimed shall be traceable to source documents (e.g., invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested. ~~_, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).~~ Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim. All claims shall identify the number of pupils in out-of-state residential programs for the costs being claimed.

VIII. DATA FOR DEVELOPMENT OF A STATEWIDE COST ESTIMATE

~~The State Controller's Office is requested to include in the claiming instructions a statement urging that claimants send an additional copy of the completed test claim specific form(s) for the initial years' reimbursement claim(s) by mail or facsimile to the Commission on State Mandates, 980 Ninth Street, Suite 300, Sacramento, California 95814, Facsimile number (916) 445-0278. Submission of these forms to the Commission is voluntary. However, such submissions will facilitate Commission's timely and accurate statewide cost estimate(s) for Legislative funding and subsequent claim payments.~~

~~The State Controller's Office is requested to submit draft claiming instructions and forms (two weeks before issuance) to the Commission on State Mandates, to permit public comment and correction(s) of omissions and errors, if any.~~

VIIIX. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of the subject mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, federal funds and other state funds, shall be identified and deducted from this claim.

VIIIX. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's Office claiming instructions, for those costs mandated by the State contained herein.

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